



July 20, 2016

Douglas W. O'Donnell
Commissioner, Large Business & International Division
Internal Revenue Service
Mint Building
801 9th Street, NW
4th Floor
Washington, DC 20220

RE: LB&I Reorganization and Changes to the Examination Process

Dear Commissioner O'Donnell:

When CEETA¹ first met with you in October of 2015, the Large Business & International Division ("LB&I") of the Internal Revenue Service ("IRS" or "Service") was in the midst of two monumental tasks: (1) the reorganization of LB&I into nine Practice Areas, and (2) revising LB&I's examination processes to reflect an issue-focused approach. We have viewed with great interest each of the changes LB&I has announced, including the release of the final version of Publication 5125, the Large Business & International Division Examination Process ("LEP"), which replaced the Quality Examination Process ("QEP") effective May 1, 2016, as well as significant modifications to the Internal Revenue Manual (at IRM 4.46). We have also observed LB&I's implementation of the new examination process and the extent to which we see the changes affecting the planning and conduct of examinations.

CEETA commends LB&I for attempting to design a collaborative process. Pub. 5125 states in this regard, "The examination can be efficient if the examination team and the taxpayer work together in a spirit of cooperation, responsiveness, and transparency." We agree.

¹ The Coalition for Effective and Efficient Tax Administration ("CEETA") is a coalition of companies and trade associations seeking to effect constructive administrative and legislative changes to IRS audit practices. More information can be found at www.eetax.org.

In the spirit of collaboration espoused in the announced changes and consistent with the belief expressed in our letter dated November 13, 2015,² that the key to improved tax administration is the ability of LB&I and taxpayers to work together to build an effective process, CEETA offers the following comments and observations.

Coalition member comments fall into three broad categories: (1) management of examinations, (2) timely resolution of cases, and (3) the appropriate future model for large-case examinations.

Management of Examinations

The reorganization of LB&I into nine practice areas, each of which appears to be relatively autonomous, is of concern to taxpayers who previously found the splitting of LB&I into just two management chains (domestic and international) created hurdles to efficient and effective audits. While LB&I executives have made it clear that the reorganization is intended to foster collaboration within LB&I and eliminate the issues created by the dual structure, taxpayers and practitioners are concerned that the multiple management chains will have the opposite effect, a concern that appears to be shared by IRS field personnel. Creating nine separate management chains may result simply in more silos requiring coordination rather than breaking down the impediments to effective and efficient audits. At least in the short-term, the intended cultural shift to collaboration across the practice areas is bound to present challenges while LB&I leadership works to educate field personnel on how collaboration is intended to operate in practice. CEETA believes there is a need to design and implement robust procedures for collaboration and would be pleased to have the opportunity to provide comments during both the design and implementation stages.

CEETA commends LB&I for responding to taxpayer concerns by clarifying the role of the case manager and acknowledging that taxpayers typically want a single point of contact. However, the deliberate decision not to imbue any manager with decision-making authority that would enable him or her, e.g., to bring a case involving multiple issues to closure, is likely to lead to conflicts when multiple issue managers are committed to their particular issues. Under the new structure, the first point of convergence of the nine practice areas, i.e., so-called tie-breaking authority, is the Deputy Commissioner. Even if practically speaking such tie-breaking authority will rarely need to be invoked, the need to negotiate with multiple practice area management chains will lead to inefficiencies. Taking issues all the way to the Deputy Commissioner level for resolution will be a long, frustrating process for both taxpayers and IRS personnel and will add to the potential for conflict in the examination process.

LB&I executives have made clear that they want taxpayers to elevate concerns they have in specific cases promptly so that leadership can better understand what is happening in the field and address it. Greater transparency into how cases are actually conducted in the field and the challenges faced by taxpayers and IRS field personnel alike is critical to a more effective and efficient examination process going forward. We urge LB&I leadership to reinforce this point and to provide a clear escalation path to reduce unnecessary conflict between taxpayers and IRS field personnel as a result of the escalation.

As we have explained previously, taxpayers generally are very reluctant to elevate an issue out of concern that doing so will adversely affect their ongoing relationship with their examination

² http://www.eetax.org/images/EETAX/CEETA_Letter_to_IRS_111315_b.pdf

team, leading to more burdensome audits and possibly additional adjustments. Under the new system, we understand LB&I managers are encouraged to elevate issues promptly. This is a good development. It is our view, however, that taxpayers' reluctance to elevate concerns will only change if the stigma of the taxpayer elevating an issue is removed. Doing so will require positive recognition of the elevation of an issue. For example, performance reviews could reward agents for constructively engaging when the taxpayer elevates an issue.

CEETA recognizes that there needs to be a transition period (some LB&I executives have suggested it could be as long as several years) and expects there will be growing pains in the process. We recommend that LB&I institute a formal review process of a sample of audits conducted over the next five years to assess implementation of the new procedures. A key component of this should be surveys of both taxpayer and IRS field personnel responsible for the audit. An automatic review process will take some of the pressure off taxpayers and help defuse any perceived or real issues of retaliation.

Timely Resolution of Cases

When we met in October, we communicated the frustration of taxpayers with the increasing time it is taking to complete examinations and repeated requests for statute extensions. While we recognize that some of this may be attributable to stretched resources, it also appears to be attributable to specialized functions within LB&I operating on their own timetables without accountability for completing the audit in a timely and efficient manner. While we applaud the absorption of specialists into the practice areas as members of issue teams, similar to the concerns expressed in the previous section, only time will tell if the collaboration envisioned among issue teams is successful in alleviating the issues encountered in the old structure or if, rather, the new structure replicates or creates additional inefficiencies.

We also note that the LEP and IRM changes are intentionally silent on two key aspects of the reorganized LB&I Division and LEP: centralized risk assessment and campaigns, which we understand are still under development. While we understand LB&I is collecting ideas for campaigns from its own employees, we respectfully request that you include the public in this process as well, otherwise the intended transparency of the new process runs the risk of becoming one-way glass. The new procedures and recent comments by LB&I executives also suggest that the field will continue to play a role in risk-assessing returns, even after the returns have been centrally risk-assessed. We are concerned this will remain a "continuous" as opposed to coordinated process. We are particularly concerned by the declining emphasis on estimated completion dates ("ECDs") as a metric for field personnel. The latter factor, when combined with the proposed open-ended nature of risk assessment, raises concerns that requests for statute extensions will increase rather than decrease under the new system. Even more concerning is that it has been suggested that the identification of a new "campaign" prior to the lapse of a statute might justify reopening a previously closed examination, notwithstanding the Service's long-standing policy against such reopenings under section 7605(b) of the Internal Revenue Code ("Code").³

Like the concerns with elevation raised above, many taxpayers do not feel comfortable objecting to requests for statute extensions out of fear of damaging the relationship with their IRS

³ See, e.g., Rev. Proc. 2005-32; Policy Statement 4-3, I.R.M. 1.2.13.1.1 (Dec. 21, 1984).

examination team. There is a growing concern that a taxpayer's failure to extend the statute of limitations could lead to a designated summons under section 6503(j) of the Code, adding to the burden and contentiousness of an examination. As a result, in most cases, taxpayers feel pressured to extend the statute of limitations when asked even when they have been entirely responsive on a timely basis to the examination team's requests for information and proposed adjustments.

Future Model for Large-Case Examinations

CEETA commends LB&I for reconsidering how it deploys its resources with respect to the largest taxpayers. We are past the point when the examination of a return simply because of the size of the taxpayer represents a reasonable allocation of resources. Rapid elimination of the Coordinated Industry Case ("CIC") program and the continuous audits it represents would be a significant step forward. Efficiency should not come at the price of certainty, however. The Service as well as corporate taxpayers, their audit committees, and shareholders share an interest in achieving "certainty sooner." Particularly so long as LB&I retains CIC, it should also retain some form of the Compliance Assurance Process ("CAP"). Currency has been a critical factor in reducing the burden of examinations on the Service and taxpayers alike. CEETA recognizes LB&I's view that CAP consumes too many resources and shares the desire to reduce examination resources consumed unnecessarily. CEETA recommends that LB&I consider how the principles of currency and transparency that CAP represents can be incorporated into a model that is also characterized by less frequent and resource-intensive audits of large-case taxpayers. If a system is adopted under which the Service decides not to audit some years of large, publicly traded taxpayers, there should be a process for notifying the taxpayer that its return for that year will not be audited. We urge LB&I to closely monitor the impact of the procedural changes discussed above on the currency of examinations and to make adjustments to the procedures if necessary.

Thank you for considering these comments. CEETA stands ready to engage with LB&I on the ways in which taxpayers and LB&I can work together to create a more effective and efficient audit process that will allow LB&I to redeploy its resources to address identified noncompliance. We are confident that our members' experiences would be helpful as you continue to develop and implement changes to the examination process. If you have questions, please contact either Pam Olson at (202) 414-1401 or Liz Askey at (202) 414-1322.

Sincerely,

CEETA

cc: Rosemary Sereti, Deputy Commissioner (LB&I)
David Horton, Assistant Deputy Commissioner Compliance Integration (LB&I)